

**Testimony by  
Ranchers-Cattlemen Action Legal Fund –  
United Stockgrowers of America  
(R-CALF USA)**

**Presented by  
Chuck Kiker, Board of Director, R-CALF USA  
Beaumont, TX**

**Before the  
United States House of Representatives' Committee on Agriculture  
On  
Review of the U.S. Department of Agriculture's Rule Providing for Canadian Beef and  
Cattle Imports  
March 1, 2005**

My name is Chuck Kiker, I am a cow/calf producer from Beaumont, TX, and a member of the Board of Directors of the Ranchers Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA). R-CALF USA is a non-profit trade association representing more than 53,000 independent cattle producers, over 13,000 of which are individual members of R-CALF USA in 44 states, and over 40,000 are members of R-CALF USA's 60 affiliated organizations. R-CALF USA is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry.

I want to thank Chairman Goodlatte, Ranking Member Peterson, and all of the members of the committee for having this hearing. I very much appreciate the opportunity to share our views on the United States Department of Agriculture's (USDA's) Final Rule titled Bovine Spongiform Encephalopathy, Minimal-Risk Regions and Importation of Commodities.

The members of this Committee know that R-CALF USA discovered USDA was unlawfully allowing the direct import of higher-risk beef products from Canada and commingling those products in the U.S. market soon after the agency had made public pronouncements to consumers that such products would not enter the U.S. market until the agency had thoroughly and scientifically assessed the risks of taking such actions and only after the agency had issued final rules to modify the longstanding regulations that continue to prohibit such actions. R-CALF USA believed that these actions could have jeopardized consumers' confidence in the safety of beef available in the U.S. market. Our markets were particularly vulnerable to an erosion of consumer confidence at this time because of the December 2003 discovery of a

Canadian cow with BSE in Washington state. Under these circumstances, we found ourselves in the unenviable and unwanted position of having to file a lawsuit against USDA in April 2004.<sup>1</sup>

As a result of R-CALF USA's lawsuit, the U.S. cattle industry and both domestic and international consumers were afforded court-ordered protection from the unlawful actions of the USDA for the eight-month period beginning in May 2004 and ending in January 2005.<sup>2</sup>

The USDA's Office of Inspector General has since completely confirmed the allegations in our lawsuit. The Inspector General's office found that in October 2003, the Animal and Plant Health Inspection Service (APHIS) secretly decided to allow the direct import of ground beef, tongues, bone-in beef, and processed beef, even though the agency knew the decision increased the possibility that higher-risk product would enter the United States. I believe these facts and other statements in the Inspector General's report indicate that APHIS has been placing the desire to satisfy the meat packing industry's concerns and the desire to promote foreign policy objectives with Canada over careful, reasoned scientific judgments.<sup>3</sup>

At issue today is the USDA Final Rule that permanently relaxes the import restrictions the U.S. has had in place since 1989, which have effectively and successfully prevented BSE from entering the United States and contaminating the U.S. cattle herd and the U.S.-produced beef supply for the past 15 years.<sup>4</sup>

The effect of the USDA Final Rule, if it is allowed to take effect on March 7, 2005, will be to further threaten consumer confidence in the safety of beef available in the U.S. market. USDA initially threatened consumer confidence in the beef available in the U.S. market in 2003 when it first began exposing the U.S. market to beef products from a country known to have BSE, but where the severity of the BSE problem was uncertain. Today the BSE problem in Canada is even more questionable, with three additional BSE cases detected after the rule was proposed and under limited testing. Now the USDA's Final Rule increases the risk that consumer confidence in our beef supply will be jeopardized. And, as a result the U.S. cattle industry faces a grave danger if USDA's actions result in further exposure to BSE in this country and consumers react negatively.

---

<sup>1</sup> See *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Department of Agriculture*, et al., No. CV-04-51-BLG-RFC.

<sup>2</sup> *Id.* See Order, May 5, 2004.

<sup>3</sup> See Audit Report, Animal and Plant Health Inspection Service oversight of the Importation of Beef Products from Canada, U.S. Department of Agriculture, Office of Inspector General, Northeast Region, Report No. 33601-01-Hy, February 2005.

<sup>4</sup> *The USDA Final Rule relaxes APHIS's longstanding prohibition, contained in 9 C.F.R. § 93.401, of the importation of live cattle and other ruminants from countries where BSE is known to exist. It also relaxes the existing ban on imports of edible products of ruminants from countries where BSE is known to exist, contained in 9 C.F.R. § 94.18. These import bans were consistent with international practice and were intended to prevent the transmission of BSE to native cattle herds and to prevent potential vCJD in domestic human consumers of ruminant products. Although a BSE positive Canadian cow did penetrate the United State's first line of defense in December, 2003, corrective measures in addition to the import ban, i.e., increased testing, SRM removal policies, and banning of downer cattle from the food supply, have been implemented to minimize the impact of any additional breaks that may have occurred in the United State's BSE firewalls.*

Congress should take immediate steps to repeal the USDA APHIS Final Rule providing for the importation of Canadian beef and cattle for the following reasons:

**1. APHIS has improperly classified Canada as a minimal BSE risk country when Canada cannot meet the OIE established standards for a minimal BSE risk country, as recognized by 167 World Trade Organization member-countries**

APHIS claims Canada meets the World Organization for Animal Health (Office International des Epizooties or OIE) classification of a minimal BSE risk country despite the agency's acknowledgement that Canada does not meet all of the OIE's minimal BSE risk standards.<sup>5</sup>

Prior to APHIS's issuance of the November 4, 2003 proposed rule predating the Final Rule, APHIS sought the advice of OIE experts regarding whether or not the OIE would accept a relaxation of the OIE standards relating to the duration of the meat-and-bone meal (MBM) feed ban. The OIE experts rejected APHIS's request and stated, "One of the most important conclusions of the recent OIE expert group is that the scientific basis used in the present Code is still valid."<sup>6</sup> Despite this rejection by the international group of scientists, and despite the high probability that the other 167 WTO countries would likely follow the scientific recommendations of the OIE rather than APHIS, APHIS persists in improperly classifying Canada in an OIE risk category for which it is ineligible. APHIS admits the OIE rejected its request in the Final Rule.<sup>7</sup>

Before conducting any further analysis of the improper designation of Canada as only a minimal BSE risk country, the actions by APHIS in seeking an exception for Canada from the OIE's minimal standards raises a serious question: Why is APHIS attempting to protect the United States with only the minimal protections recommended by the OIE, particularly when APHIS admits it must make an exception for Canada in order for it to qualify for such minimal protections? The longstanding BSE standard APHIS is attempting to change is a standard of complete or maximum protection for the United States. The Final Rule now changes that standard to a bare-minimum standard of protection. R-CALF USA believes this is an unacceptable level of protection for the U.S. cattle industry, as it will potentially jeopardize consumer confidence in the beef available in the U.S. market.

In defense of its position, APHIS claims the OIE Terrestrial Animal Health Code (OIE Code) is merely a guideline for countries to use to conduct risk assessments of potential trading partners. Based on the notion that OIE standards are only guidelines, APHIS assumes that Canada's

---

<sup>5</sup> Federal Register, Vol. 70 No. 2, January 4, 2005, at 470: "Canada, in fact, meets all OIE guidelines for a minimal-risk region, except for the duration of its feed ban."

<sup>6</sup> OIE Addresses Demands on Clarification of BSE Standards, OIE Press Release, October 2003, available at [http://www.oie.int/eng/press/en\\_031002.htm](http://www.oie.int/eng/press/en_031002.htm).

<sup>7</sup> Federal Register, Vol. 70 No. 2, January 4, 2005, at 474: "The APHIS recommendation that the OIE standard for the minimum duration of a feed ban be reduced from 8 years to 5 years was based on the estimated average incubation period of the BSE agent in cattle. As discussed above, the Harvard-Tuskegee Study (Ref 17) estimates that the variability distribution for the BSE incubation period in cattle has a median (50th percentile) of approximately 4 years. Based on the best-fit parameter values provided in the Harvard-Tuskegee Study (Ref 18), the mean (expected value) of the incubation period distribution is estimated at 4.2 years. However, the OIE decided not to change the standard." (Emphasis added.)

compliance with the remaining OIE standards more than compensates for Canada's inability to meet the MBM feed ban standard.

When the final rule was originally written in November 2003, Canada's feed ban had only been in effect for six years and two months. But after three additional cases were discovered, particularly the last case discovered on January 11, 2005, which was a cow born after the feed ban was implemented, it was determined that the feed ban was not effectively enforced when it was implemented. Upon further investigation, it was learned that all feed already in the system containing ruminant MBM continued to be fed after the MBM feed ban was implemented in August 1997, until supplies were depleted.<sup>8</sup> This suggests Canada is even further away than originally thought from being in compliance with the basic OIE requirement that a MBM feed ban be effectively enforced for at least 8 years in order for a country to qualify as a minimal BSE risk country.

APHIS's characterization of the OIE Code is at best an oversimplification of the scientific significance and validity of OIE standards. APHIS is correct in that the OIE provides guidelines to conduct risk assessments. However, the OIE Code is far more comprehensive in its establishment of BSE standards than APHIS acknowledges. The OIE chapter establishing the health standards for managing human and animal health risks associated with the prevalence of BSE in a country's cattle herd directly contradicts APHIS's claim that the OIE standards only provide guidelines for countries to use to conduct risk assessments of potential trading partners.<sup>9</sup> The OIE code fully contemplates the possibility that countries, as is the case for Canada, may be able to meet some, but not the entire criterion established for its minimal BSE risk classification. The OIE Code describes precisely how countries with Canada's risk characteristics are to be treated and explicitly states that such countries are to be considered moderate BSE risk countries. The OIE Health Code states:

Countries and zones where the BSE incidence rate has been less than one indigenous case per million within the cattle population . . . , but where at least one of the other requirements to be considered as . . . presenting a minimal BSE risk is not complied with, shall be considered countries or zones with a moderate BSE risk.<sup>10</sup>

It is critically important for each of the Committee to know that there are only six requirements that countries with BSE in their native cattle herd must meet in order to qualify under the OIE classification of a minimal BSE risk country.<sup>11</sup> As evidenced by these six requirements, the one that Canada cannot meet – an effectively enforced MBM feed ban for at least eight years – is the single, most important requirement, as this is the only requirement that provides an active

---

<sup>8</sup> See "BSE Cattle Update: Statement from the Canadian Cattlemen's Association," January 11, 2005: "It's important to note that while the feed ban began in August, 1997, there was no recall issued at that time on feed ingredients already in the system. The March, 1998 birth date of the BSE case announced today is likely the result of exposure to pre-feed ban feed that was still residual in the system and does not indicate a lack of feed ban compliance at this stage of the investigation."

<sup>9</sup> Health Standards, Terrestrial Animal Health Code 2004, 12<sup>th</sup> Edition, Office International des Epizooties, available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_2.3.13.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_2.3.13.htm).

<sup>10</sup> *Id.* at Article 2.3.13.6.

<sup>11</sup> *Id.* at Article 2.3.13.5.

defense to the amplification of the BSE agent. The remaining five requirements are passive in nature and provide no tangible defense to the spread of BSE. At best, these remaining five requirements provide the means of monitoring the efficacy of the MBM feed ban.

Basic OIE requirements countries must meet to present a minimal BSE risk:

1. It must have had an effectively enforced feed ban for at least 8 years.
2. It must have completed a risk assessment.
3. It must meet minimal surveillance requirements
4. It must have an on-going BSE awareness program
5. It must have a compulsory notification and investigation program for BSE cases.
6. It must have approved laboratories to conduct BSE tests.

As Secretary Johanns and USDA staff acknowledged in Senate hearings last month, Canada implemented its MBM feed ban less than eight years ago, thus it fails the first of the OIE's criteria. Because the most critical criteria- the feed ban- has not been in place for sufficient enough time, it is clear that Canada meets only the OIE risk classification of a moderate BSE risk country because Canada cannot meet at least one of the requirements to be considered as presenting a minimal BSE risk. It is equally clear that APHIS erred in classifying Canada as a minimal BSE risk country, particularly when important United States export customers, and many of the other 167 WTO member countries, do not recognize Canada as only presenting a minimal BSE risk because they know that Canada has not effectively enforced its MBM feed ban for at least eight years.

Obviously, the OIE standards do far more than merely provide guidelines for countries to conduct risk assessments (particularly since the completion of risk assessments is among the OIE health standards) of potential trading partners as claimed by APHIS.<sup>12</sup> Indeed, the OIE provides a standardized approach to properly classifying countries according to their BSE risk and then provides the scientifically recommended risk mitigation measures that should be followed, depending on what risk category a country falls under, in order to effectively manage the associated human and animal health risks.

The effect of the Final Rule will be that the U.S. will accept products from Canada that do not meet the minimally accepted mitigation measures recommended by the internationally recognized OIE to manage the human and animal health risks associated with the prevalence of BSE in Canada. In addition, there is no harmonization agreement among the other 167 WTO member countries to provide any assurance that those countries agree with the exception APHIS

---

<sup>12</sup> See Appendix 3.8.5. Factors to Consider in Conducting the Bovine Spongiform Encephalopathy Risk Assessment Recommended in Chapter 2.3.13. *Here the OIE addresses the potential exposure of cattle to the BSE agent through the consumption of MBM:* "Assumptions: That the consumption by bovines of meat-and-bone meal or greaves of ruminant origin plays the only significant role in BSE transmission. . . . Question to be answered: Has meat-and-bone meal or greaves of ruminant origin been fed to cattle within the past 8 years (Articles 2.3.13.3. and 2.3.13.4. in the Terrestrial Code)? Rationale: If cattle have not been fed products of animal origin (other than milk or blood) potentially containing meat-and-bone meal or greaves of ruminant origin within the past 8 years, meat-and-bone meal and greaves can be dismissed as a risk." *Because Canada has documented that a cow was fed MBM after the 1997 feed ban, and further because the feed ban has not been in place for 8 years, Canada continues to demonstrate an MBM risk.*

has made to the OIE standards in order to classify Canada as a minimal BSE risk country. Failure to first achieve a harmonization agreement will result in the U.S. becoming a dumping ground for products other countries will not accept.

## **2. The APHIS Final Rule does not comply with international, science-based BSE risk mitigation standards**

The Final Rule is a hodgepodge of scientific standards in which APHIS picks and chooses which scientific standard it will and will not comply with. On the one hand and as described above, APHIS dismisses the stringency of the OIE's health standards pertaining to categorizing Canada's international BSE risk status and improperly categorizes Canada as a BSE minimal risk country. On the other hand, APHIS staunchly defends the mitigation requirements it is imposing on Canada based on its assertion that it is strictly complying with OIE standards for minimal BSE risk countries.

The result of this scientific inconsistency is that the Final Rule assigns to Canada a series of less stringent BSE risk mitigation measures than the Final Rule should. For example, the Final Rule doesn't require the removal of specified risk materials (SRMs) in Canadian cattle until they are over 30 months old. However, the OIE recommendation for countries meeting Canada's risk characteristics is that SRMs be removed from all cattle over 12 months of age, along with certain restrictions on SRMs for cattle over six months of age.<sup>13</sup> Also, the Final Rule requires Canada to conduct surveillance testing only on high-risk cattle not destined for the human food supply. However, the OIE recommendations for country's meeting Canada's risk profile is that surveillance testing be conducted on a portion of the population of cattle subject to normal slaughter and entering the food system.<sup>14</sup>

## **3. The Final Rule falls well short of the internationally accepted and scientifically proven BSE rules practiced by every other nation in the world where BSE exists and where success has been achieved in reducing the incidence of BSE**

BSE has been detected in 23 countries in the world, including the United Kingdom and Canada.<sup>15</sup> Some of these countries, particularly the United Kingdom, Japan, and the 17 member-countries of the European Union with BSE, have far more experience in managing and controlling BSE in their respective cattle herds than does Canada, and many of these countries have a proven record of successfully reducing the incidence of BSE.

---

<sup>13</sup> Health Standards, Terrestrial Animal Health Code 2004, 12<sup>th</sup> Edition, Office International des Epizooties, Article 2.3.13.18. (2), and Article 2.3.13.15. (5), available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_2.3.13.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_2.3.13.htm).

<sup>14</sup> See International Animal Health Code – 2004, Surveillance Systems for Bovine Spongiform Encephalopathy, Appendix 3.8.4, Articles 3.8.4.1 and 3.8.4.3: “In countries not free from BSE, sampling at routine slaughter is a means of monitoring the progress of the epizootic and the efficacy of control measures applied, because it offers continuous access to a cattle population of known class, age structure and geographical origin,” available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_3.8.4.htm#rubrique\\_encephalopathie\\_spongiforme\\_bovine](http://www.oie.int/eng/normes/mcode/en_chapitre_3.8.4.htm#rubrique_encephalopathie_spongiforme_bovine)

<sup>15</sup> Number of Reported Cases of Bovine Spongiform Encephalopathy (BSE) in Farmed Cattle Worldwide\*(excluding the United Kingdom), Office International des Epizooties (OIE), available at [http://www.oie.int/eng/info/en\\_esbmonde.htm](http://www.oie.int/eng/info/en_esbmonde.htm).

The Final Rule however, does little to harmonize global beef trade and will require Canada to practice the least stringent BSE mitigation measures of any country in the world where BSE exists. For example, every other country in the world with BSE removes SRMs from cattle beginning at least at the age of 12 months.<sup>16</sup> In addition, every other country in the world tests a higher percentage of cattle entering the human food chain than Canada, and most of these BSE-affected countries have mandatory BSE testing requirements for all cattle over 30 months of age.<sup>17</sup>

Whereas in 2004, Canada tested only 23,500 of its approximately 5 million adult cattle,<sup>18</sup> the countries within the European Union (EU) tested over 10 million of their approximately 44.6 million adult cattle in 2003.<sup>19</sup> Importantly, most of the cattle tested in the EU are healthy cattle subject to normal slaughter. Thus, the EU is testing over 20 percent of its adult cattle population, enabling a scientifically valid estimation of the BSE incidence rate within its member countries. Canada is not testing enough cattle to scientifically determine the BSE incidence rate in its cattle herd.

The effect of the Final Rule will be that the U.S. will not require Canada to implement the scientific mitigation measures practiced by every other BSE-affected country, making Canada's products the most hazardous exports in the world from the standpoint of BSE risk management.

**4. The Final Rule fails to recognize the scientific principle that appropriate BSE risk mitigation measures are not a one-size-fits-all proposition, but rather, must be based on the scientifically determined magnitude of the BSE problem itself.**

The fundamental scientific principle underpinning the OIE's BSE health and safety standards is that the overall risk of BSE in the cattle population of a country is proportionate to the level of known or potential exposure to BSE infectivity and the potential for recycling and amplification of the infectivity through feeding practices.<sup>20</sup> The OIE uses these two combined factors – the

---

<sup>16</sup> BSE-New State of Play, Activities of the European Union, Regulation (EC) No. 999/2001, available at: <http://europa.eu.int/scadplus/leg/en/lvb/f83002.htm>; Emergency Report, The Director General, OIE, June 6, 2002, available at: <http://agri3.huji.ac.il/%7Eyakobson/bseEN/bseOIE020604EN.htm>; BSE Public Health Issues – Specified Risk Materials, Department for Environment, Food and Rural Affairs, United Kingdom, available at: <http://www.defra.gov.uk/animalh/bse/publichealth/srm.html>; Control Measures in Cattle, SFVO Control Measures, BVET, OVF, UFV, available at: <http://www.bvet.admin.ch/tiergesundheits/00199/00200/00665/index.html?lang=en>; Final Report, Japan-United States BSE Working Group, July 22, 2004.

<sup>17</sup> BSE-New State of Play, Activities of the European Union, Regulation (EC) No. 999/2001, available at: <http://europa.eu.int/scadplus/leg/en/lvb/f83002.htm>; Final Report, Japan-United States BSE Working Group, July 22, 2004; Control Measures in Cattle, SFVO Control Measures, BVET, OVF, UFV, available at: <http://www.bvet.admin.ch/tiergesundheits/00199/00200/00665/index.html?lang=en>; Emergency Report, The Director General, OIE, June 6, 2002, available at: <http://agri3.huji.ac.il/%7Eyakobson/bseEN/bseOIE020604EN.htm>.

<sup>18</sup> Sample Status and Testing Results, Canadian Food Inspection Agency, available at <http://www.inspection.gc.ca/english/anim/hsean/disemala/bseesb/surv/surve.shtml>.

<sup>19</sup> Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2003, Including the Results of the Survey of Prion Protein Genotypes in Sheep Breeds, European Commission, ISSN 1725-583X, at 8 and 9, available at [http://europa.eu.int/comm/food/food/biosafety/bse/annual\\_reps\\_en.htm](http://europa.eu.int/comm/food/food/biosafety/bse/annual_reps_en.htm).

<sup>20</sup> Terrestrial Animal Health Code 2004, Factors to Consider in Conducting the Bovine Spongiform Encephalopathy Risk Assessment Recommended in Chapter 2.3.13., Office International des Epizooties (OIE), Appendix 3.8.5, Article 3.8.5.8, available at

disease prevalence within the cattle herd and the feeding practices of the country – to determine the severity of BSE risk mitigation measures necessary to manage the associated human and animal health risks of the affected country.

Thus, in order to protect public and animal health, the OIE Code recommends different risk mitigating measures, with increasing levels of severity as countries move from categories of lower to higher levels of BSE risk.<sup>21</sup> For example: For high BSE risk countries, the OIE recommends deboning all meat from cattle over nine months of age;<sup>22</sup> for moderate BSE risk countries – the appropriate classification for Canada – the OIE recommends removing all specified risk materials (SRMs) in cattle over 12 months of age;<sup>23</sup> for minimal risk countries – countries with BSE that have had an effectively enforced feed ban in place for at least eight years – the OIE recommends the removal of SRMs in all cattle over 30 months of age.<sup>24</sup>

While the OIE recommends that risk mitigation measures to effectively manage human and animal health risks must increase in severity as the BSE risk or uncertainty of the BSE risk increases, APHIS does not. The Final Rule requires Canada to practice the very same BSE risk mitigation measures as did the proposed rule issued on November 4, 2003. At the time APHIS issued the proposed rule, only one case of BSE had been detected in Canada's native cattle herd. Also at that time, APHIS insisted Canada had effectively enforced its feed ban since August of 1997.

On December 23, 2003, when the second case of BSE was discovered in a native Canadian cow, APHIS did not increase the severity of mitigation measures for Canada. On January 2, 2005, a third case of BSE was detected in a native Canadian cow. Again, APHIS did not revise its initial recommendation. On January 11, 2005, a fourth case of BSE was detected in a native Canadian cow, this one contracting BSE some time after the August 1997 feed ban. Again, APHIS did not revise its initial November 4, 2003 recommendations. The only revision USDA made to its recommendations was to announce the suspension of the portion of the rule that would have allowed Canadian beef from cattle over 30 months of age. However, Canadian beef from cattle over 30 months of age was never proposed in the November 4, 2003 proposed rule – it was added in the March 8, 2004 notice of reopening the comment period. Thus, despite multiple detections of BSE in Canada, the APHIS Final Rule remains unchanged from the November 4, 2003 proposed rule, which was based on the detection of a single BSE-positive Canadian cow.

It is abundantly clear that APHIS dismisses the scientific principle that risk mitigation measures must increase in proportion to the increase in the known BSE risk or the uncertainty of the BSE risk. In addition, it is clear that APHIS is unmoved by the fact that not only has Canada not had a MBM feed ban in place for 8 years, but also, contaminated feed continued to be fed to

---

[http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_3.8.5.htm#rubrique\\_systemes\\_de\\_surveillance\\_et\\_de\\_suivi\\_cont\\_inu-fievre\\_aphteuse](http://www.oie.int/eng/normes/mcode/en_chapitre_3.8.5.htm#rubrique_systemes_de_surveillance_et_de_suivi_cont_inu-fievre_aphteuse).

<sup>21</sup> OIE Addresses Demands on Clarification of BSE Standards, OIE Press Release, October 2003, available at [http://www.oie.int/eng/press/en\\_031002.htm](http://www.oie.int/eng/press/en_031002.htm).

<sup>22</sup> Health Standards, Terrestrial Animal Health Code 2004, 12<sup>th</sup> Edition, Office International des Epizooties, at Article 2.3.13.16 (3), available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_2.3.13.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_2.3.13.htm).

<sup>23</sup> *Id.* at Article 2.3.13.18 (2).

<sup>24</sup> *Id.* at Article 2.3.13.14 (4); Article 2.3.13.18 (3).

Canadian cattle after the Canadian feed ban was implemented, as evidenced by the 81-month old Canadian cow diagnosed with BSE on January 11, 2005.

As a result, the effect of the Final Rule will be that the U.S. will begin accepting Canadian products produced under risk mitigation measures that are inadequate to effectively manage the human and animal health risks associated with Canada's increased risk of BSE.

**5. The Final Rule fails to recognize the science-based difference between the prevalence, and therefore the risk, of BSE in Canada compared to the United States**

Canada has documented four cases of BSE in its native cattle herd. The U.S. has never detected a BSE case in its native cattle herd.

Canada is officially listed by the OIE, along with 22 other countries including the United Kingdom, as a country with reported cases of BSE in native cattle. The U.S. is not on this international list.<sup>25</sup>

Canada has a known failure in its MBM feed ban, as evidenced by the fact that the January 11, 2005 BSE case was detected in a cow born well after the implementation of Canada's MBM feed ban. The U.S. has no known failures in its feed ban.

Based on the foregoing three facts alone, it is counterintuitive to suggest that Canadian cattle and beef should be subject to no increase in BSE risk mitigation measures when compared to U.S. cattle and beef. Yet, that is precisely what the Final Rule proposes. USDA has repeatedly stated that U.S. and Canadian BSE mitigation measures are similar if not identical. Yet, Canada has multiple cases of BSE and the United States does not. Because Canada is a country known to be infected with BSE, and the United States is not, Canada's BSE surveillance and control programs should be higher than the United States', but they are not. Further, Canadian cattle and beef should be subject to higher risk mitigation standards than U.S. beef and cattle, but they are not.

The effect of the Final Rule is that consumer confidence in U.S. beef will be jeopardized because beef from Canada's cattle herd – a herd with a documented BSE risk and a documented failure in its BSE prevention program, will be allowed into the U.S. and commingled with U.S. beef without requiring any additional safety measures than are applied to the United States cattle herd – a herd with no such documented risk. The U.S. cattle industry in turn will be dramatically injured if consumer confidence in the safety of the beef supply drops.

**6. The Final Rule fails to recognize the scientific fact that cattle under 30 months of age can be infected with BSE**

The OIE recognizes a risk of BSE in cattle less than 30 months of age. As stated above, OIE health standards recommend the removal of SRMs from cattle at different ages, depending on the BSE incidence rate and the length of time risk mitigation measures were *effectively* enforced to minimize the risk of BSE in cattle younger than 30 months of age. OIE health standards

---

<sup>25</sup> Number of reported cases of bovine spongiform encephalopathy (BSE) in farmed cattle worldwide (excluding the United Kingdom), Office International des Epizooties, available at [http://www.oie.int/eng/info/en\\_esbmonde.htm](http://www.oie.int/eng/info/en_esbmonde.htm).

recommend that for BSE-affected countries (even where the BSE incidence rate is less than one case per million head of cattle, but where a country has not effectively enforced its MBM feed ban for at least 8 years) that all SRMs be removed from cattle over 12 months of age.<sup>26</sup> For countries with a high BSE risk, the OIE recognizes a BSE risk in even younger cattle, and recommends the complete deboning of cattle over 9 months of age.<sup>27</sup> Although it is uncertain if Canada's incidence rate of BSE is more than one case per million head of cattle,<sup>28</sup> it is known that Canada has not had its MBM feed ban in place for 8 years. Therefore, OIE standards recognize a BSE risk from Canadian cattle beginning at the age of 12 months.

As discussed above, every other BSE-affected country in the world recognizes a risk of BSE in cattle less than 30 months of age. This is evidenced by the fact that each of these countries, whether they have had only one documented case of BSE (Israel) or numerous cases of BSE (European Union), all remove SRMs from all cattle over at least 12 months of age. (The possible exception is Lichtenstein, for which information is unavailable.)

Recent scientific evidence reveals that the agent that causes BSE – prions (a unique, newly-discovered disease-causing protein) have been found in many tissues of laboratory animals, sheep, and humans where it was never before found, including blood, and muscle, including tongue. This cutting-edge scientific evidence suggests a greater probability than previously assumed of BSE risk in many more tissues other than SRMs currently recognized by the OIE.

Countries more experienced than Canada in managing and reducing BSE risks have already detected BSE in many cows as young as 20 months of age, proving that 30 months of age does not and will not exclude all BSE cases.<sup>29</sup> BSE can and has been diagnosed in cattle between the ages of 20 to 30 months of age. While APHIS claims that BSE-infected cattle less than 30 months of age have only been found in regions with a high prevalence of BSE, Japan has discovered two cases of BSE in cattle under 30 months of age and Japan has only detected 14 BSE-infected cattle since 2001, after testing more than 3 million cattle.<sup>30</sup> The Japanese

---

<sup>26</sup> Health Standards, Terrestrial Animal Health Code 2004, 12<sup>th</sup> Edition, Office International des Epizooties, at Article 2.3.13.6; Article 2.3.13.14. (5); Article 2.3.13.18.(2), available at [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_2.3.13.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_2.3.13.htm).

<sup>27</sup> *Id.* at Article 2.3.13.16.(3).

<sup>28</sup> *It is important to note that the OIE's 2004 calculation of Canada's BSE incidence rate at 0.149 cases per million adult cattle is not the estimate of the true prevalence rate in the Canadian herd. It is the estimate based on detected cases only -- and these are limited by the small size of Canada's testing program. The numbers cited in the OIE table for Canada may be very low (compared to the true prevalence rate driving risk to the US from imports), because the sample sizes are so small in Canada. For example: The United Kingdom's (UK's) adult herd size at 4.9 million head is comparable to Canada's herd size of 5 million head. However in 2003 the UK tested 460,752 adult cattle and had an OIE reported incidence rate of 122 cases per million adult cattle. Canada tested only 23,550 adult cattle in 2004 and has an OIE reported incidence rate of only 0.149 cases per million adult cattle. Obviously, Canada's incidence rate is skewed by its very limited testing program and its incidence rate could be closer to that of the UK, but this could only be known with increased testing.*

<sup>29</sup> Statistics – Youngest and oldest cases by year of onset – GB (Passive Surveillance Only), Department of Environment, Food and Rural Affairs, United Kingdom, as of October 1, 2004, available at: <http://www.defra.gov.uk/animalh/bse/statistics/bse/young-old.html>; Final Report, Japan-United States BSE Working Group, July 22, 2004, at 2.

<sup>30</sup> Number of reported cases of bovine spongiform encephalopathy (BSE) in farmed cattle worldwide (excluding the United Kingdom), Office International des Epizooties, available at [http://www.oie.int/eng/info/en\\_esbmonde.htm](http://www.oie.int/eng/info/en_esbmonde.htm); Final Report, Japan-United States BSE Working Group, July 22, 2004, at 2.

experience undercuts the APHIS claim and suggests APHIS is ignoring the risks associated with cattle under 30 months of age.

The effect of the Final Rule will be that consumers and the U.S. cattle industry will be subjected to the known and potential risk from beef derived from Canadian cattle under 30 months of age, though they will not be made aware of this risk and they will not be afforded the opportunity to choose to avoid that risk because the Final Rule does not require Canadian beef to be labeled with its country of origin or in any way distinguished from U.S. beef.

**7. The Final Rule fails to acknowledge the scientific fact that there is an uncertain risk in consuming central nervous system tissues in animals under 30 months of age**

USDA, in its 2004 negotiations with Japan, stated it does not know the BSE risk to human health associated with central nervous system (CNS) tissues from cattle that carry the BSE disease, but are too young for BSE to be detected using the current limited testing methods, i.e. cattle under the age where testing is meaningful. This admission strongly suggests that any exposure to beef from younger cattle originating in a country where BSE is known to exist, such as Canada, presents an *unknown BSE risk to consumers*. “Unknown” is not the same as “miniscule,” “negligible,” or “de minimis.” The Japan-United States BSE Working Group comprised of experts and working-level officials reported:

Japan and the U.S. agree that accumulated abnormal prion protein in younger animals is unlikely to be detected using current testing methods. Japan and the U.S. agree that at present any relationship of such undetectable levels of abnormal prion protein in CNS tissues to consumers’ risk is unclear.<sup>31</sup>

The Final Rule ignores this unknown risk to consumers and requires no mitigation measures other than the removal of the small intestine and tonsils from cattle less than 30 months of age, thereby subjecting U.S. and international consumers to whatever risk scientists later determine is presented by the remaining CNS tissues of younger cattle.

While it is the case that USDA presently allows Canadian boneless beef derived from cattle under 30 months of age into the U.S. market, this beef is presently subject to the most strenuous risk mitigation measures recommended by the OIE (recall the OIE recommends the deboning of beef over 9 months of age for high BSE risk countries). However, the Final Rule will eliminate this strenuous deboning risk mitigation measure and will effectively lower the existing consumer protections against the risk of BSE from Canadian beef. The USDA has not explained why the relaxation of the currently practiced and OIE-recommended deboning process is no longer needed to adequately protect the U.S. market from the introduction of BSE from Canada.

---

<sup>31</sup> Final Report, Japan-United States BSE Working Group, July 22, 2004.

Both the presumption that the BSE infectious agent resides only in SRMs in cattle over 30 months of age, and the implicit assumption that no other tissues present a risk of BSE infection are further unjustified if BSE can be transmitted through blood as recent studies have shown.<sup>32</sup>

The effect of the Final Rule is that consumers and the U.S. cattle industry will be exposed to an uncertain risk of BSE from Canadian cattle under 30 months of age and no measures, other than those applicable to U.S. cattle (removal of tonsils and small intestines), will be implemented in an attempt to mitigate this uncertain risk.

**8. The Final Rule ignores key science-based risk mitigation measures known to be effective in identifying diseased cattle several months before the outset of clinical signs of BSE**

USDA has acknowledged that current testing methods can detect positive cases of BSE two to three months before the animal begins to demonstrate clinical signs,<sup>33</sup> thus enabling the detection of asymptomatic BSE-infected cattle before they enter the human food chain. R-CALF USA has requested in comments to APHIS that cattle subject to normal slaughter be tested for BSE. USDA's response to R-CALF USA's request was, "We understand the interest expressed by some commenters in testing certain cattle for slaughter. However, no live animal tests exist for BSE and the currently available postmortem tests, although useful for disease surveillance (i.e., in determining the rate of disease in the cattle population), are not appropriate as food safety indicators."<sup>34</sup> Thus, USDA has adopted a policy decision whereby it will not use BSE testing to identify BSE-infected cattle before they enter the food system because the test may not detect all the infected cattle entering the food system. The fact that testing can detect cattle before they exhibit clinical signs of BSE, along with the fact that testing is the only means of positively identifying BSE-infected cattle, despite its limitations, raises serious questions about USDA's refusal to add this tool to the public's arsenal of BSE defenses.

In fact, USDA's investigation of the one case of BSE found in the United States (in a cow born and raised in Canada) indicates that that cow did not display clinical signs consistent with BSE and was randomly tested because she was non-ambulatory. That provides a real-world example of how testing all Canadian-origin cattle, of the age where testing is meaningful, at the time of slaughter would have identified a BSE-infected animal that Canada's current targeted approach would have missed.

*The Final Rule does not require, nor is Canada testing cattle at routine slaughter.* Canada's voluntary surveillance program targets only cattle believed to be at high-risk for BSE: dead, dying, diseased, and down cattle over 30 months of age and cattle showing neurological symptoms consistent with BSE.<sup>35</sup> The Final Rule does not require any country seeking a minimal BSE risk designation to test any more than the minimum number of cattle fitting only the OIE's subpopulation characteristics of high-risk cattle. USDA claims that if BSE is not

---

<sup>32</sup> C. Llewellyn, P. Hewitt, R. Knight, K. Amar, S. Cousens, J. Mackenzie, R. Will, Possible transmission of variant Creutzfeldt-Jakob disease by blood transfusion, *The Lancet*, v. 363, 417-21 (Feb 2004).

<sup>33</sup> Federal Register, Vol. 70 No. 2, January 4, 2005, at 475.

<sup>34</sup> Federal Register, Vol. 70 No. 2, January 4, 2005, at 475.

<sup>35</sup> *Id.* at 469.

detected in high-risk cattle, there is no benefit to testing other cattle populations,<sup>36</sup> and states that Canada tested 15,800 cattle in 2004, all with negative results for BSE.<sup>37</sup> This reasoning might be appropriate if Canada were still determining *whether* BSE is present in its herd. It is not appropriate for testing and monitoring prevalence after four cases have been confirmed.

The statistical rationale needs to shift from testing for presence of BSE (hypothesis-testing) to quantitative estimation and monitoring of prevalence. For this purpose, OIE recommendations and international recommendations from countries experienced with BSE call for testing cattle at routine slaughter. For example, the EU continues to test *all* cattle over 30 months of age entering the human food chain in addition to mandatory testing of animals not entering the food chain over a certain age.<sup>38</sup> Japan, tests *all* cattle entering their food chain.<sup>39</sup> Switzerland tests all high-risk cattle over 30 months of age along with 7000 cattle entering the food chain under normal slaughter.<sup>40</sup> Israel requires testing of *all* slaughtered cattle over 30 months of age.<sup>41</sup> Thus, Canada's testing program falls far short in all respects to the testing programs of every other country in the world that is known to be affected by BSE (with the possible exception of Liechtenstein, for which information is unavailable).

In addition, Canada's BSE testing program does not meet the minimal testing recommendation of the OIE and is inferior to all testing programs of all countries affected with BSE. As a result, Canada is taking no steps to prevent asymptomatic BSE-diseased cattle from entering the human food chain, even though testing can detect this invariably fatal disease several months before cattle show any visible signs of the disease.<sup>42</sup> USDA appears to be praising Canada's testing program on the grounds that it will help to detect BSE if there is any. But this is no longer a relevant issue: presence of BSE has already been established. Now a testing program for quantifying and monitoring the prevalence of BSE is needed. Canada's testing program is inadequate and inferior to all other BSE-affected countries for this purpose, which is the one purpose that should matter for policy-making.

The effect of the Final Rule will be that consumers will not be afforded the added protection that would result if Canadian cattle entering the food system were tested for BSE, so as to remove any BSE-infected animal that can be identified only by testing for several months before the animal begins exhibiting outward signs of the disease.

**9. The Final Rule fails to take measures to mitigate the projected economic and potential health impacts on the U.S. cattle industry and on consumers if additional, multiple cases of BSE are found in Canada.**

---

<sup>36</sup> Federal Register, Vol. 70 No. 2, January 4, 2005, at 484.

<sup>37</sup> *Id.*

<sup>38</sup> BSE-New State of Play, Activities of the European Union, Regulation (EC) No. 999/2001, available at: <http://europa.eu.int/scadplus/leg/en/lvb/f83002.htm>.

<sup>39</sup> Final Report, Japan-United States BSE Working Group, July 22, 2004.

<sup>40</sup> Control Measures in Cattle, SFVO Control Measures, BVET, OVF, UFV, available at: <http://www.bvet.admin.ch/tiergesundheits/00199/00200/00665/index.html?lang=en>.

<sup>41</sup> Emergency Report, The Director General, OIE, June 6, 2002, available at: <http://agri3.huji.ac.il/%7Eyakobson/bseEN/bseOIE020604EN.htm>.

<sup>42</sup> Federal Register, Vol. 70, No. 2, Tuesday, January 4, 2005, Rules and Regulations, at 475.

The Final Rule provides no mitigation measures to protect against the possibility that USDA has underestimated the severity of the BSE problem in Canada. Should additional cases of BSE be discovered in Canada, or if vCJD cases begin to be detected in Canadian citizens, there are no measures in place to safeguard the U.S. cattle industry from a loss of consumer confidence in Canadian beef.

Because the Final Rule does not require Canadian beef to be differentiated in the U.S. market with a country of origin label, any loss of consumer confidence in Canadian beef will translate into a loss in consumer confidence in U.S. beef because consumers will not be able to distinguish between them.

At the very least, beef produced in Canada or beef produced from Canadian cattle slaughtered in the U.S. must be differentiated with a country of origin label to avoid the very real possibility that U.S. consumers may choose to avoid Canadian beef. Without this important safeguard, the U.S. cattle industry will be exposed to the potential, future risk of a loss in consumer confidence.

The effect of the Final Rule is that the U.S. cattle industry will be continually forced to assume the ongoing negative consequences of the Canadian BSE problem, including the loss of export markets and the potential loss of U.S. consumer confidence in the safety of Canadian beef, particularly if more cases of BSE are detected in Canadian cattle.

**10. Principles that must be reconsidered before the United States considers reopening the Canadian border to cattle and beef.**

R-CALF USA wants to ensure that domestic and international confidence in the U.S. beef supply is maintained and that scientifically based standards are set to manage the trade of beef and cattle from countries that are affected by BSE. R-CALF USA believes that any proposed USDA rule to allow the importation of Canadian cattle and beef must adhere to the following principles:

- A. Appropriate age restrictions for the importation of Canadian cattle must be established that recognize the minimum age at which BSE has been detected in cattle and harmonized with the age restrictions required by U.S. export customers.
- B. An appropriate testing program for Canadian cattle slaughtered in the U.S. or slaughtered in Canada and processed for products destined for the United States. As noted above, Canadian cattle and beef should be tested under more stringent guidelines than their U.S. counterparts. R-CALF USA believes Canada must implement a more comprehensive surveillance program that includes all high-risk Canadian cattle as well as a statistically valid sampling of healthy cattle to allow for a scientifically valid determination of the true incidence rate of BSE in the Canadian cattle herd.
- C. An appropriate SRM removal requirement for all Canadian-origin cattle, whether processed in the United States or Canada, prior to processing. Because Canada is an OIE moderate risk country, beef entering the United States must have SRMs removed at least at 12 months of age.

- D. An appropriate identification program for all Canadian cattle imports so that they will be recognized for BSE testing at slaughter and can later be traced. Tracing Canadian cattle as they enter the United States is a critical aspect to monitoring and maintaining the integrity of the U.S. beef supply. If there is another BSE positive finding in a U.S. slaughter plant, USDA must be able to determine whether or not the infected animal was of Canadian origin.
- E. An appropriate country of origin labeling requirement for products for human consumption from Canadian cattle. In case there is another discovery of a BSE infected Canadian animal, U.S. consumers should be given labeling information.
- F. A more effective U.S. and Canadian feed ban to include other BSE risk materials. Pursuant to the latest BSE studies and reports, the ruminant feed ban must be expanded. Currently, the feed ban allows ruminants to consume feed containing other non-ruminant animals. Recent evidence suggests that there is a possibility of cross-contamination under those circumstances and R-CALF USA believes the feed ban should be expanded to prevent this type of feeding.
- G. A firm agreement from the major U.S. beef importing countries that the resumption of imports of Canadian cattle and beef into the United States will not cause those export markets to be closed to U.S. beef. According to news accounts USDA has, in principle, moved forward in negotiations to restore limited exports of beef into the Japanese market. R-CALF USA applauds this development, however more steps need to be taken to ensure the full renewal of beef exports to Japan, as well as other countries. Any threat to the resumption of full U.S. exports of beef is unacceptable and thus USDA must get other governments to acknowledge that the resumption in Canadian imports will not negatively impact U.S. exports.

**11. Science-based BSE rules allowing Canadian beef trade must be followed by global harmonization**

R-CALF USA believes that beef exports are important components in ensuring a healthy U.S. cattle and beef industry. Unfortunately, the uneven application of BSE standards in the current international trading environment blocks U.S. exports. We strongly believe that the United States must act to reopen these foreign markets, not only through bilateral talks, but also through the harmonization of global standards on the importation of beef from BSE affected countries. The United States can not merely implement rules with regard to opening trade with Canada, the United States must act to harmonize BSE standards globally. The harmonization of global standards is critically important to ensuring the free flow of beef. At the moment, dozens of countries, including our two largest export partners-Japan and Korea, ban the importation of U.S. beef despite the fact that there has not been a single native born case of BSE in the United States.

Under OIE guidelines the United States should not be considered a country with BSE, and therefore there can be no scientific rationale to justify a complete ban on U.S. beef exports-yet as this Committee knows, bans on U.S. beef exist around the world. Indeed, U.S. exports of beef have declined nearly 85% since the Canadian cow with BSE was discovered in Washington

state. This drop in U.S. exports contrasts with Canadian beef exports which have actually increased since the first of four BSE affected animals was discovered with the vast majority of Canadian exports coming to the United States (a 40% increase in fresh and frozen beef). These differences in results on beef exports are due entirely to different approaches on how to handle the exports of countries where BSE has been found. As example, while USDA proposes to allow imports of animals and beef from animals less than 30 months of age, Japan is only considering allowing beef from animals less than 20 months. These different standards cannot both be based on sound science.

If the U.S. does not obtain either country compliance with existing OIE guidelines before opening the U.S. border to additional imports from Canada, or at least obtain harmonized standards for receiving cattle and beef from countries with known BSE risks, the U.S. cattle industry will be seriously damaged as we become a dumping ground for beef. Mr. Chairman, members of the Committee, you must ensure that our industry is not damaged through such disparate standards.

### **Conclusion**

R-CALF appreciates this opportunity to present its views to the Committee concerning the important changes that need to take place in the USDA's proposed rule to reopen the border with Canada as well as the critical issues facing the United States concerning BSE. We would be pleased to respond to questions or provide any additional information that the Committee might need.

Respectfully submitted,

Chuck Kiker  
R-CALF USA Board Member